

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
MICHAEL L. COYLE	:	DETERMINATION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1982 through 1984.	:	

Petitioner, Michael L. Coyle, 19 Oakhurst Road, Buffalo, New York 14220, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1982 through 1984 (File No. 803377).

A hearing was held before Timothy J. Alston, Administrative Law Judge, at the offices of the Division of Tax Appeals, 65 Court Street, Buffalo, New York, on March 21, 1988 at 1:15 P.M. Petitioner appeared pro se. The Audit Division appeared by William F. Collins, Esq. (Deborah J. Dwyer, Esq., of counsel).

ISSUE

Whether the Audit Division properly determined that petitioner's employment during the period June 18, 1982 through July 25, 1984 was of an indefinite nature, rather than temporary, and thereby properly disallowed certain travel expenses claimed by petitioner during the years at issue.

FINDINGS OF FACT

1. On April 11, 1986, the Audit Division issued a Notice of Deficiency to petitioner, Michael L. Coyle, asserting additional personal income tax due of \$1,562.00, plus interest, for the years 1982, 1983 and 1984.

2. The deficiency herein resulted from the Audit Division's disallowance of employee business expenses claimed by petitioner for each of the years at issue in amounts as follows:

<u>Year</u>	<u>Amount Disallowed</u>	<u>Resulting Deficiency</u>
1982	\$5,509.00	\$560.00
1983	5,778.00	578.00
1984	4,226.00	424.00

3. Petitioner makes his living as a welder. At all times relevant herein he was a member of Steamfitter's Local 395 located in Buffalo, New York. In March 1982 petitioner was laid off from his Buffalo-area job. Petitioner was, at that time, unable to find work in the Buffalo area. He subsequently found work at the construction of the Nine Mile Two Plant in Oswego, New

York, where he was employed by ITT Grinnell Industrial Piping, Inc. He worked for ITT Grinnell in Oswego from June 18, 1982 through July 25, 1984.

4. The Nine Mile Two job was a major construction project which, by 1982, had been in progress for a number of years. At hearing, petitioner estimated that he could have continued to work in Oswego on the Nine Mile Two job for an additional three or four years.

5. Prior to his employment in Oswego, petitioner caused his name to be placed on the "out-of-work list" at Local 395. As employment opportunities arose, individuals on the list were contacted by the Local and were advised of the employment opportunity. At the time he caused his name to be placed on the list in March 1982, it was petitioner's intention to find work in the Buffalo area. Following his employment in Oswego, it remained petitioner's intention to return to the Buffalo area at the first opportunity; that is, as soon as work became available in the Buffalo area.

6. Petitioner's lack of a job in March 1982 was brought about by the general condition of the Western New York economy. Consequently, at the time he accepted employment in Oswego in June 1982, he had no idea as to when economic conditions would improve and thereby allow him to find work in the Buffalo area.

7. While he was working at the Nine Mile Two plant, petitioner lived in an apartment in the Oswego area. Petitioner's wife and children continued to reside at their home in Buffalo. Petitioner continued to pay the costs of maintaining his Buffalo home. Petitioner returned to his home in Buffalo on weekends during his Oswego employment period. Petitioner's wife continued to work in Buffalo.

8. The disallowed employee business expenses herein were costs to petitioner of traveling between Oswego and his home in Buffalo; rent paid for his apartment in Oswego; and petitioner's meals in Oswego. The amounts of the expenses are not in dispute.

9. Given the state of the economy in Western New York during the period at issue, petitioner was not contacted by his Local regarding an employment opportunity in the Buffalo area until 1984. Upon learning of the employment opportunity in Buffalo, petitioner discontinued his employment in Oswego and returned home to Buffalo.

CONCLUSIONS OF LAW

A. Section 162(a)(2) of the Internal Revenue Code provides for a deduction for traveling expenses, including meals and lodging, if reasonable in amount and incurred by a taxpayer in connection with a trade or business, and while "away from home". In the instant matter, at issue is whether the expenses in question were incurred away from home, the Audit Division having conceded the remaining requisites to the deductibility of petitioner's expenses.

B. A taxpayer's "home" for purposes of IRC § 162(a) has long been held to be the vicinity of his principal place of business (see, e.g., *Barnhill v. Commr.*, 148 F2d 913; Rev. Rul. 60-189). An exception to this rule allows a taxpayer having a principal place of employment to go elsewhere to work on a "temporary" basis while retaining as his home for IRC § 162(a)(2) purposes his home located in the vicinity of his prior place of employment. The exception thus provides a taxpayer on a "temporary" work assignment the advantage of section 162(a)(2). From this "temporary" employment exception, a body of case law has developed attempting to define

"temporary" employment for purposes of IRC § 162(a)(2) on the one hand, and employment of an "indefinite" duration on the other.

C. "Temporary" employment has been defined as the kind of employment that can be expected to last only a short period of time (see, *Norwood v. Commr.*, 66 TC 467, 469; *McCallister v. Commr.*, 70 TC 505). Conversely, employment is "indefinite" if its termination within a fixed or reasonably short period of time cannot be foreseen. In making the distinction between indefinite and temporary, certain criteria have been developed by the courts:

"Relevant considerations include whether the taxpayer had a logical expectation that the employment would last for a short period, an assurance that the job itself would not extend beyond a reasonably brief duration, an inordinate duplication of living expenses, and enough financial, familial and social bonds to choose prudently to remain at his original residence, rather than uproot his family from their accustomed home and relocate them at the site of his present work."
(*Holter v. Commr.*, 37 TCM 1707, 1711.)

D. Based on the record herein, petitioner has failed to establish that his employment in Oswego was temporary and not indefinite in nature. Petitioner has shown that he had close ties to the Buffalo area (e.g., his home, wife, children, wife's job), and a desire to resume working in the Buffalo area. The record also makes clear, however, that petitioner's job in Oswego could reasonably have been expected to last for several years, and he apparently had no idea as to when an employment opportunity would arise in Buffalo. And, as it happened, a job did not become available to him in Buffalo for over two years. Given these facts and circumstances the Audit Division's determination that petitioner's Oswego employment was indefinite in nature and the resulting disallowance of petitioner's claimed expenses were proper. (See *Babeaux v. Commr.*, 601 F2d 730, *rev'g* 36 TCM 657 [where the U.S Court of Appeals for the Fourth Circuit reversed a Tax Court finding and determined that employment was indefinite under facts and circumstances similar to those presented herein]. See also *Groover v. Commr.*, 714 F2d 1103; *Nulsen v. Commr.*, 48 TCM 297.)

E. The petition of Michael L. Coyle is in all respects denied and the Notice of Deficiency, dated April 11, 1986, is sustained.

DATED: Albany, New York
June 30, 1988

_____/s/_____
ADMINISTRATIVE LAW JUDGE